

Best Practices

Gone, But Not Forgotten

Dealing with Paperless Public Records in an Electronic Age



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Eight Practical Pointers for Government Officials

By Jeannie Foley - Public Affairs Staff Writer

You may no longer hear a tiny voice announcing “You’ve got mail!” every time an e-mail lands on your computerized desktop, but there is no doubt that electronic communication is becoming increasingly common in the workplace.

Since e-mails, text messages and other forms of electronic communication often lack physical hard copies, it could be easy to forget about these paperless “documents” when dealing with record-retention practices. But these paperless communications can often qualify as public records, and they must be properly maintained to comply with Ohio’s Sunshine Laws.

“It is important that you follow your office’s retention schedules,” said Robin Rose, director of the Open Government Unit at the Ohio Auditor of State’s Office. “If

you don’t, you may have to recreate records at your own expense.”

“...if the content of the e-mail meets the statutory definition of a public record, it must be kept...”

Robin Rose

In 2008, the Ohio Supreme Court emphasized this point by holding that a public office is responsible

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Dear Colleague,

Sunshine Week, observed this year during the third week of March, reminds us that accountability and transparency in government are fundamental to American democracy. Ohio taxpayers place a great deal of trust in government officials, at every level, to conduct the public's business openly. In return, those who serve the public have an obligation to ensure that government's door is always open. Ohio's Sunshine Laws – the Public Records Act and Public Meetings Act – make this obligation a matter of law. In other words, open government is not only a best practice; it is also an essential practice.

In this edition of *Best Practices*, you will find information to help you obtain the *Ohio Sunshine Laws 2010: an Open Government Resource Manual*. I hope you will use this manual throughout the year to keep yourself well informed of your rights and responsibilities under Ohio's Sunshine Laws.

Sincerely,

Mary Taylor

Mary Taylor, CPA
Ohio Auditor of State

Gone, But Not Forgotten

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for recreating e-mails deleted in an improper manner [*State ex rel. Toledo Blade Co. v. Seneca Cty. Bd. of Commrs.*]. The court unanimously ruled that if e-mail messages needed to fulfill a suitable public records request have been deleted in violation of a public office's approved records-retention policy, the office must pay the cost of finding and reproducing those records. The Ohio Supreme Court found that the expenses the government entity may incur as a result of recovering the deleted e-mails is not a strong justification for an entity's noncompliance to the public records provisions of Ohio's Sunshine Laws.

“...Although each office is responsible for developing its own individual schedules, the Ohio Historical Society and the Auditor's Open Government Unit are both available to help local governments find resources to assist them...”

“Because the office did not establish they were following their retention schedules, they were required to hire an outside expert to perform a forensic recovery of the computer systems used in the office,” Rose explained. “Even when computer



files appear to have been erased from the system, electronic traces remain behind. Recovering ‘deleted’ files and e-mail requires specialized technology and expertise – an expensive proposition that can be avoided by being proactive about records retention.”

It is important to understand that content should be the driving force behind determining whether a record needs to be retained. While it may be easy to think of e-mails as insignificant because we receive them in electronic form, if the content of the e-mail meets the statutory definition of a public record, it must be kept according to a public office's appropriately approved retention schedule.

“In addition, an office needs to address changes in its records and update its retention schedules accordingly,” Rose said. “Luckily, there are resources available to help. Although each office is responsible for developing its own individual schedules, the Ohio Historical Society and the Auditor's Open Government Unit are both available to help local governments find resources to assist them to develop appropriate records retention schedules.”

Keeping in mind the increasing number of ways to communicate and store information using fast-changing technology, the following are some practical pointers from the *Ohio Sunshine Laws Manual*, a resource provided by the Ohio Auditor of State and the Ohio Attorney General, which can be used in evaluating the records retention schedules in your office:

1. If you don't dispose of your records when your retention schedule says you can, they will still be subject to a public records request.
2. If you don't have a records retention schedule that says how long you have to keep a particular kind of record, you must maintain that record indefinitely.
3. The medium (e.g., paper, electronic) or format of an item does not determine whether that item is a "record." Content determines whether or not it's a record.
4. Every record in your office, not just those qualifying as public records, must be covered by an appropriately approved retention schedule.
5. Taking inventory will help you identify records that haven't been scheduled. This will also help you locate unnecessary copies and dispose of records that are being kept past their retention period.
6. Make sure you have a schedule for transient records that permits destruction of

records that are temporary in nature — such as telephone messages, drafts, voice mail and Post-it Notes — as soon as they no longer have administrative value.

7. Designate a records manager/custodian. If possible, this person should attend one of the many public records training sessions that offices of the Ohio Auditor of State and Attorney General provide. (Note that elected officials or their designees are **required** to attend training.)
8. Keep track of new records that are created as a result of statutory/policy changes. A retention schedule for each new record must be designated within one year after the date that record was created or received.

If you have any questions regarding Ohio's public records laws or you would like a copy of the *Ohio Sunshine Laws Manual* for 2010, contact Auditor of State Mary Taylor's Open Government Unit at 800-282-0370 or by e-mail at ogu@auditor.state.oh.us.

The manual may also be viewed or downloaded as a PDF file at the Auditor of State's Web site: www.auditor.state.oh.us.

In addition, helpful resources and forms are available from the Ohio Historical Society's Local Government Records program at www.ohiohistory.org/portal/lgr-p.html. ■

Local Government Officials Conference

Apr. 7–8, 2010
Columbus

This two-day conference is open to all Ohio local government officials to help further **develop expertise in government accounting, budgeting and finance, legal compliance, ethics and Ohio's open government laws.**

Your participation will satisfy **continuing education requirements** for village clerks, clerk-treasurers and fiscal officers.

www.auditor.state.oh.us

10th Annual
Emerging Trends in Fraud Investigation and Prevention Conference
May 17-18 2010
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SPOTLIGHT:

Attractive Alternative

Agreed Upon Procedures Offer a Cost-Saving Audit Option for Many Ohio Governments

By Mary Taylor, CPA - Ohio Auditor of State

Smaller units of government in Ohio – including many villages, townships, public libraries and other entities with budgets less than \$1 million a year – may benefit from important cost savings through a new audit procedure now offered to eligible clients by the Auditor of State's office.

Financial audits, conducted by my staff or by private-sector audit firms under our review, are required by law for every unit of government in Ohio, including all cities, villages, schools, universities, counties, townships, state agencies, boards and commissions. An independent, transparent audit is a valuable financial-management tool and an essential safeguard against fraud, waste and abuse involving public dollars.

But the conventional audit process also creates a necessary expense for cash-strapped governments in Ohio, at a time when many public officials struggle to balance their budgets and provide basic services for the communities they serve. Knowing this, I am committed to finding ways to make the audit process more efficient – and therefore less expensive – for the clients we serve.

One important cost-reduction strategy we recently introduced involves the use, in appropriate situations, of the audit process known as an Agreed Upon Procedure

(AUP). For those governments that qualify and then choose to proceed with this option, an AUP can be an effective, less-costly alternative to a conventional audit.

“...we continue to seek new and innovative efficiencies that help control audit costs without compromising the accountability and transparency that all Ohio citizens insist upon...”

Late last year, I was pleased to announce a new policy [*Auditor of State Bulletin 2009-012*] allowing AUPs to be used alternately with conventional financial audits for certain government clients demonstrating a good audit history. In the past, my office has successfully conducted AUPs for some convention/visitors bureaus and certain other small-scale entities in Ohio. Under our new policy, we

have significantly expanded the list of those eligible to request an AUP.

AUPs offer a high level of accountability for the client and the community, but because they are less time-consuming, eligible clients will see lower audit costs. It is important, however, to understand the differences between a financial audit and an AUP. For example, in a traditional financial audit, the auditor expresses a formal opinion on the fair presentation of the financial statements, while an AUP results in a less-formal “presentation of findings.” The AUP covers high-risk areas and still ensures financial accountability. If problems appear in the course of conducting an AUP, the client and auditor can make the decision to engage in a conventional financial audit.

Because AUP engagements are limited in scope, they will not be appropriate in every setting and not all clients will be eligible for this type of review. There also may be circumstances in which a client that qualifies for an AUP review will decline this option and choose to continue receiving a conventional financial audit. That is an important feature to note in our new policy: a government agency is in no way required to engage in an AUP.

Only government entities with a good audit history and the ability meet certain other specified requirements will be eligible for this type of audit. For eligible clients and their communities, AUPs offer a high level of accountability. And because of the nature of the work required to complete an AUP engagement, eligible clients will see lower audit costs.

Contact my office if you have any questions about AUPs or related issues. To access Auditor of State bulletins, publications and information regarding this or other government finance issues, visit www.auditor.state.oh.us. We can also be reached by letter, phone or e-mail, using the contact information provided in this issue.

Of course, not every government in Ohio will qualify for the AUP alternative, which is limited to those with a \$1 million annual budget or less in addition to other requirements. But public entities of every size can be assured that my staff and I are working to increase audit efficiency – and thus reduce audit costs – for governments of all types and sizes in Ohio. Working with input from statewide organizations representing our various client categories, as well as the Auditor of State’s regional advisory boards, we continue to seek new and innovative efficiencies that help control audit costs without compromising the accountability and transparency that all Ohio citizens – and public officials who serve them – insist upon and deserve. ■

Do We Qualify for an AUP?

Government entities must meet **all** of the following three criteria to qualify for an AUP engagement:

- The client must be an agricultural society, county board of health, cemetery, conservancy district, family and children first council, fire/ambulance district, library, park/recreation district, regional planning commission, solid waste district, township, village or water and sewer district. Others may qualify on a case-by-case basis. (Note that certain audit clients, such as political parties and convention/visitor bureaus, are already subject to AUPs for each audit cycle and are unaffected by policies described here).
- The client must follow the Auditor of State’s regulatory cash or modified cash accounting basis.
- The client must have at least a minimal level of compliance with Ohio budgetary law.

In addition, the client **cannot**:

- Have an annual budget exceeding \$1 million.
- Have been declared “unauditable” during the previous audit period.
- Have, on the most recent financial audit, experienced a qualified opinion, finding for adjustment, finding for recovery that indicates fraud or theft, or finding related to material control weaknesses.
- Be under investigation by the Auditor of State’s Special Investigations Unit or otherwise be at high risk of fraud.
- Be in fiscal emergency.
- Have outstanding audit fees in excess of 120 days in arrears.
- Have a turnover in the fiscal officer position during the audit period.
- Be required to have an audit under the Single Audit Act, or provisions of any law, grant or debt covenant.

Any **one** of the above “cannots” is disqualifying. See *Auditor of State Bulletin 2009-012* for complete information.

AUP Engagement Instead of a Traditional Financial Audit

In January 2010, as part of a pilot project by the Auditor of State, some government entities were eligible for an AUP engagement instead of a traditional financial audit. By utilizing this option, local governments benefit from lower costs, while AOS auditors are still able to provide efficient, high quality service and fiscal oversight to the entities.

The AUP engagement at the Village of Sugar Grove in Fairfield County is one such example. The AUP covered fiscal years 2008 and 2009 and provided cost savings of more than 50 percent compared to the previous financial audit.

Another example is Addison Township in Gallia County, which recently qualified for an AUP and realized a 73 percent reduction in costs when

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AUP engagement instead of a traditional financial audit

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compared to their prior audit expense.

Both of these local governments, as well as others who are qualified for an AUP, are experiencing the benefits of these engagements – lower costs and expedited results, while auditors are still able to address any potential significant risks at the entity. At Sugar Grove and Addison Township, auditors offered recommendations to help each local government make improvements, while providing taxpayers with the necessary fiscal supervision expected from the Ohio Auditor of State.

“To qualify for an Agreed Upon Procedure engagement, local government entities need to have a history of clean audits and must meet very specific criteria,” Chief Deputy Auditor Bob Hinkle said. “Our office believes these engagements provide the accountability and transparency taxpayers are looking for while they also create a more efficient, timely and cost-effective process for the client.” ■

What You Should Know About Single Audit Preparation

Federal ARRA Funding May Require Many to Have a First-time Single Audit in FY 2010

Here Are Some Tips

By Marnie Carlisle - Senior Audit Manager

Many state and local government entities, including school districts, are receiving federal funding through the American Recovery and Reinvestment Act of 2009 (ARRA). Whenever an entity expends federal awards (either direct or indirect awards) in excess of \$500,000, that entity is subject to provisions of federal *OMB Circular A 133*. Because of this requirement and the distribution of ARRA funds, additional public entities in Ohio may qualify for a first-time single audit for fiscal year 2010.

Auditor of State Mary Taylor describes the single audit process as key to enforcing the accountability requirements of the ARRA and other laws. “A quality single audit can help assure everyone – the entity’s officials, state and federal governments and the public – of a federally funded program’s integrity,” she said. “Early detection of noncompliance can also permit more timely corrective action. Public officials who are subject to the single audit process for the first time can help ensure the success of that process by being well educated about the single audit.”

To assist affected entities with compliance, the Auditor of State’s office has prepared this brief overview of *A-133* requirements. At the end of the article, there are links to additional support the Auditor of State’s office offers.

Federal program and award identification on the *Schedule of*

Expenditures of Federal Awards (SEFA) must include, as applicable, the *Catalog of Federal Domestic Assistance* (CFDA) title and number, award number and year, name of the federal agency, and name of the pass-through entity. Also, auditees must separately identify ARRA expenditures in the SEFA pursuant to 2 CFR 176.210, *Recovery Act Transactions Listed in Schedule of Expenditures of Federal Awards and Recipient Responsibilities for Informing Subrecipients*.

Auditees are required to identify all federal awards received and expended in each federal program. The *A-133* defines a “federal award” as “federal financial assistance and federal cost-reimbursement contracts that... entities receive directly from federal awarding agencies or indirectly from pass-through entities. It does not include procurement contracts... used to buy goods or services from vendors.”

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Auditors will use the auditee-prepared SEFA to complete federal program risk assessments and determine major programs subject to a single audit. As part of this process, auditors will segregate major programs by size, analyze high-risk program indicators, determine the applicable percentage of coverage rule for the auditee and obtain an understanding of selected major programs for audit.

Accuracy and completeness of the SEFA, as prepared by management, is critical to avoid over-testing or missing federal programs. To help ensure completeness and accuracy, auditees should reconcile the SEFA to their general ledger/accounting system. Additionally, auditees should ensure they have appropriately identified and labeled applicable federal program clusters in the SEFA. For example, auditees should cluster together federal awards with the same CFDA number. Furthermore, certain federal programs have similar requirements but different CFDA numbers. Such programs should be “clustered” together based on the guidance in Part 5 of the federal *OMB Compliance Supplement*. Auditors then treat these program clusters as one program for major program determination and testing.

Before testing major programs, auditors must determine if the entity is a low-risk auditee by performing a two-year look back on past audit reports to determine if:

- An *A-133* audit was performed
- Unqualified opinions on financial statements and SEFA were rendered

- Material weaknesses were noted
- Compliance findings with a material impact on a Type A program were noted
- Known/likely questioned costs exceeding five percent of total awards expended on Type A programs were noted.

If an auditee qualifies as a low-risk auditee, the auditor needs 25 percent coverage of total federal award expenditures on the SEFA. If the auditee is not low risk, the auditor must obtain 50 percent coverage. After this determination, the auditor can begin the process of selecting major programs and assessing risk.

When testing major programs, auditors must test both the auditee’s design and implementation of internal controls over federal programs. Auditors must also test an auditee’s compliance with grant regulations and effectiveness of internal controls. The federal *OMB Compliance Supplement* (www.whitehouse.gov/omb/grants/circulars/) includes a minimum of 14 compliance requirements that auditors must test, to the extent applicable, for each major program. The ARRA also mandates certain additional requirements that are applicable only to federal recovery programs.

Auditors must also review the terms and conditions of applicable grant documents and manuals to determine additional key compliance requirements that may need to be tested. Auditors need to test only those compliance requirements that are direct and material to the major federal program, but auditees are

responsible for compliance with all applicable requirements. For this reason, auditees should not try to predict an auditor’s scope and should comply with all of the applicable requirements.

For more information regarding the single audit process, contact your regional Auditor of State’s office (contact information at www.auditor.state.oh.us). Auditees can also refer to *AOS Bulletins 2009-005* and *2009-007* available at www.auditor.state.oh.us/services/lgs/bulletins/ for information regarding ARRA awards and the Auditor of State’s Ohio Stimulus Tracker. Frequently asked questions regarding the ARRA and the Ohio Stimulus Tracker are available at www.auditor.state.oh.us/recovery/faq.htm. ■

Steps You Can Take to Help Ensure Single Audit Quality

- Grant the auditor access to all necessary financial and program records and be sure to identify all governmental financial assistance and federal programs in which you participate
- Ensure that key staff persons are available to the auditor
- Be actively involved – take the initiative to understand what the auditor is doing and don’t be afraid to ask questions
- Make the most out of the exit process – ask questions about the auditor’s work, the audit opinion and other compliance reports



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